HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition No. 18424 of 2005

Dated: 24th October, 2005

Between:

K.Pratap, S/o.K.Narayana, Occu: Sarpanch,

Gurukunta village, Nawabpet Mandal,

Mahaboobnagar District.

..... PETITIONER

AND

1.Commissioner, Panchayat Raj, Himayatnagar, Hyderabad

and another.

.....RESPONDENTS

HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition No. 18424 of 2005

ORDER:

This writ petition has been filed by K.Pratap assailing the order of the Collector (PTS.Wing), Mahabubnagar District/2nd responhdent, passed in Proc.No.A2/1517/2004-1, dated 08.08.2005, whereby and where under the petitioner came to be removed from the post of Sarpanch of the Gram Panchayat, Gurukunta village, Nawabpet Mandal, Mahabubnagar District, after serving show-cause notice.

2. The petitioner is an elected Sarpanch of the Gram Panchayat, Gurukunta village,

Nawabpet Mandal, Mahabubnagar District, in August, 2001. Proceedings have been initiated against him on the charge of misappropriation of 188.50 quintals of rice amounting to Rs.1,50,800/- besides cash of Rs.6,000/- from E.F.C. Funds towards distribution of ISLs beneficiaries. In the said proceedings, orders came to be passed by the Collector (PTS.Wing), Mahabubnagar District/2nd respondent, removing the petitioner from the post of Sarpanch. The petitioner questioned the orders passed by the Collector (PTS.Wing), Mahabubnagar District, by filing an appeal before the Commissioner, Panchayat Raj and Rural Employment, A.P., Himayatnagar, Hyderabad/1st respondent. The appeal came to be allowed remanding the matter to the Collector (PTS.Wing), Mahabubnagar District, for fresh enquiry. Thereuopon, the Collector (PTS.Wing), Mahabubnagar District, in exercise of the powers under Section 249 (1) of the Andhra Pradesh Panchayat Raj Act, 1994, (for short, 'the Act') issued show-cause notice on 23.05.2005 and the petitioner submitted explanation to the show-cause notice on 15.06.2005. After considering the explanation of the petitioner, final orders came to be passed by the Collector (PTS.Wing), Mahabubnagar District, on 08.08.2005 removing the petitioner from the post of Sarpanch of the Gram Panchayat, Gurukunta village, Nawabpet Mandal, Mahabubnagar District. Assailing the order of the Collector (PTS.Wing), Mahabubnagar District, the petitioner has filed this writ petition.

3. Heard learned counsel appearing for the petitioner and learned Government Pleader for Panchayat Raj and Rural Development appearing for the respondents.

4. Learned counsel appearing for the petitioner submits that the Collector (PTS.Wing), Mahabubnagar District, has passed orders impugned in the writ petition without application of mind and therefore, the order impugned in the writ petition is liable to be set aside.

5. Learned Government Pleader for Panchayat Raj and Rural Development appearing for the respondents submits that the petitioner has a statutory remedy of appeal available under Section 249 (7) of the Act and therefore, the writ petition is not maintainable.

6. It is no more in dispute that an order passed by the Collector (PTS.Wing), Mahabubnagar District, under Section 249(1) of the Act can be challenged by way of an appeal by an aggrieved party under Section 249 (7) of the Act. It is useful to refer Section 249(7) of the Act and it is thus:

> "(7) Any person aggrieved by an order of removal passed by the District Collector under sub-section (1) or sub-section (4) may within thirty days from the date of the order prefer an appeal to the Government and the Government may, pending a decision on such appeal, stay the orders appealed against."

Since the petitioner has a statutory remedy of appeal, he has to exhaust the said remedy before invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

7. Accordingly, the writ petition is disposed of giving liberty to the petitioner to file an appeal before the Government as provided under Section 249 (7) of the Act, within thirty days. No costs.

_____

B.SESHASAYANA REDDY, J.

Dated: 24th October, 2005.

cs